(c) *Requirements for Conveyance Instrument.* Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department, the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive right forbidden by section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

(4) That the grantee agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, religion, age, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR part 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(i) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(ii) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(iii) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may,

on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

(9) That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph (c)(7) of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(10) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

(d) *Procedure for Conveyance.* Upon receipt of a deed from the District Engineer, DAEN–REM will submit the deed to the appropriate Secretary for execution, and to the Assistant Attorney General, Land and Natural Resources Division, for approval, before returning it to the District Engineer for delivery to the grantee.

(1) The deed assembly submitted will contain, in triplicate:

(i) The request from the Administrator of FAA to the Secretary of the military department concerned;

(ii) The reply from the Secretary involved to the Administrator, making the property available;

(iii) The resolution by the appropriate governing body of the public agency sponsoring the project in question indicating authorization for acquisition by such agency and its concurrence with the terms and conditions of the conveyance.

(2) Transmittal correspondence shall also set forth:

(i) The type and condition of the property, including improvements acquired therewith or constructed since acquisition;

(ii) Whether there has been any change in the nature, quantity, etc., of the property requested by the agency from the date of its original request to the present. If so, details should be furnished together with an appropriate amendatory resolution (in triplicate) by the governing body of the sponsoring agency;

(iii) Expenses of transfer. In view of the provision in the Act that the conveyance will be made without any expense to the United States, if land surveys are required the transferee agency will be required to pay cost of making such surveys.

§ 644.424 Development of public port or industrial facilities.

(a) *Authority.* Section 108 of Pub. L. 86–645 approved 14 July 1960 (33 U.S.C. 578) authorizes the Secretary of the Army, after certain determinations are made, to convey land which is a part of a water resource development project to a state, political subdivision thereof, port district, port authority, or other body created by the State or through a compact between two or more States for the purpose of developing or encouraging the development of public port or industrial facilities.

(b) *Limitation.* Only lands within a navigation project will be made available for conveyance for these purposes.

(c) *Delegations, Rules, and Regulations.* Pursuant to rules and regulations published in the FEDERAL REGISTER 11 March 1961 (26 FR 2117–2118; 33 CFR 211.141 through 211.147),

(1) The Chief of Engineers or the Director of Civil Works has been delegated authority to determine:

(i) That the development of public port or industrial facilities on land within a project will be in the public interest;

(ii) That such development will not interfere with the operation and maintenance of the project;

(iii) That the disposition of the land for these purposes under this Act will serve the objectives of the project;

(iv) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purpose for which the project was authorized; and

(v) The conditions, reservations and restrictions to be included in a conveyance under the Act.

(2) The District Engineer has been delegated authority to:

(i) Give notice of any proposed conveyance under the Act and afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase; and

(ii) Determine the period of time in which applications for conveyances may be filed.

(3) *Notice.* The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (i) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within the state in which the available land is located and, if any agency of an adjoining state or states may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within such state or states, and (ii) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

(4) *Filing of Application*. Any agency interested in the development of public ports or industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully the purposes for which the land is desired and the scope of proposed development.

(5) *Price.* No conveyance shall be made for a price less than the fair market value of the land.

(6) *Conveyance.* Any conveyance of land under this Act for public port or industrial facilities will be by quitclaim deed in the form of Figure 11–5 in ER 405–1–12 executed by the Secretary of the Army.

(d) *Procedure.* (1) Proposals to convey land included in navigation projects for development of public port or industrial facilities will be forwarded by the District Engineer, through the Division Engineer, to HQDA (DAEN–REM), with recommendations, and with the information required by § 644.329, and such additional information as will enable the Chief of Engineers to make the determinations required under paragraph (c)(1) of this section.

(2) Upon receipt of notification from the Chief of Engineers that the property is available for sale for development of public port or industrial facilities, the District Engineer shall give notice of such availability in accordance with paragraph (c)(3) of this section. The public notice will follow substantially the guide format in Figure 11–4 of ER 405–1–12.

(3) If two or more applications are received from eligible agencies, all applications, with recommendations, will be forwarded, through the Division Engineer, to DAEN–REM for the determination referred to in paragraph (c)(1)(iv) of this section.

(4) Upon determination of the actual property to be included in a conveyance, the fair market value thereof will be established by an appraisal.

(5) Upon the acceptance of an application, negotiations will be conducted at the price established by the appraisal. However, the applicant will be advised that the price is subject to approval by the Secretary of the Army. This is necessary since the Secretary of the Army has not delegated his authority to determine the fair market value for conveyances under this Act. If public port facilities that can be used in connection with proposed industrial facilities have not been constructed in the vicinity, no disposal under this authority will be authorized which does not provide for construction of public port facilities.

(6) Upon completion of negotiations a quitclaim deed following the sample format in Figure 11–5 of ER 405–1–12 will be prepared and forwarded, through the Division Engineer, to HQDA (DAEN–REM) for execution by the Secretary of the Army, in accordance with the general procedure for submission of deeds for execution as outlined in § 644.441.

§ 644.425 Authority and procedure for disposal of surplus property by DA to eligible public agencies.

FPMR 101–47.303–2 provides that the disposal agency shall allow a reasonable period of time for states, municipalities, and their instrumentalities, to perfect a comprehensive and coordinated plan of use and procurement of surplus property in which they may be interested. This provision applies to surplus property that can be disposed of by negotiated sale under the special acts listed in §§ 644.428 through 644.432 for public highways, streets, and alleys under the Act listed in §§ 644.421 and 644.422, by transfer to the District of Columbia under § 644.407, and under the individual agency negotiating authority of the Federal Property Act, (40 U.S.C. 484(e)(3). A listing of the special acts, with the eligible public agencies, and some guides for classification of property for disposal are contained in FPMR, 101–47.4905.

§ 644.426 Classification.

Pursuant to FPMR, 101–47.303–1, any item of surplus land not reported to GSA for disposal in accordance with §§ 644.348 through 644.367 will be classified according to its highest and best use, e.g., industrial, commercial, agricultural, or for disposal under the special acts referred to above. Where required by the special acts, classification will be coordinated with the interested Federal agency. The classification will be recorded on ENG Form 1825 (Real Property Classification), with sufficient information to justify the classification. Surplus property may be reclassified from time to time whenever such action is deemed appropriate. Based on its classification, notice of the availability of surplus land for disposal will be given to public agencies eligible to procure such property as provided in § 644.427.

§ 644.427 Notice to eligible public agencies.

FPMR, 101–47.303–2 and 101–47.308–1, *et seq.*, provide a procedure of formal notice to eligible public agencies of the availability of surplus land for disposal. Notices are not required for property having an estimated fair market value of less than $1,000, except where the disposal agency has reason to believe that an eligible public agency may be interested in the property. Notices as provided in this section will be given for all surplus airport property and surplus fee-owned land for which the Army is the disposal agency, that is classified for disposal under a special act, or if there is reason to believe that a public agency may be interested in acquiring the land by negotiation at its appraised fair market value under the Federal Property Act (40 U.S.C. 484(e)(3)(H).

§ 644.428 Airport property.

(a) *Eligible Transferees.* The right to acquire surplus property without monetary consideration for airport purposes, under 50 U.S.C. 1622(g), with the approval of the Administrator of GSA, is limited to states, political subdivisions, municipalities and tax-supported institutions. This is the proper statutory provision governing transfers of entire military airports to state or local agencies for their use as public airports. The right of such transferees is subordinate to the priority of Federal agencies to acquire the property for their own use. Airport property will not be disposed of for any other non-Federal use until every reasonable effort has been made to dispose of it for airport purposes.

(b) *Preliminary Procedures.* (1) Request a determination by the Administrator of the FAA that the surplus land is essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport as required by 50 U.S.C. 1622(g)(1).

(2) Upon receipt of a determination by the Administrator of FAA, furnish the FAA Regional Office with a description of the property, or a copy of the Standard Form 118 if the property has been reported to GSA for screening, together with a list of the operating and maintenance equipment available for disposal with the airfield, and request that a survey under the Surplus Property Act be made and that, based thereon, recommendations for classification of the property under the Act be furnished.

(c) *Classification.* District Engineers are authorized to approve ENG Form 1825, Real Property Classification,

based on FAA recommendations. Generally, the recommendations of FAA in regard to classification of property, will be followed, except the following will be forwarded to DAEN–REM without final classification action: cases involving reduction in land areas, runways, taxiways, etc.; controversial cases; and cases where changes in the reservations, restrictions, or conditions specified in the Act are recommended by FAA. District Engineers will not classify as airport property, property in excess of that recommended by FAA or property of which the highest and best use is determined to be industrial. Where the District Engineer does not agree with the report of FAA, he will immediately submit complete data setting forth all objections to the report, together with his recommendations, to DAEN–REM.

(d) *Notice of Availability*. Upon classification of the property as airport property, notice of the proposed disposal will be sent by certified mail to the political subdivisions, or municipalities in which the property is located, and also to any other state, political subdivision, municipality, or tax-supported institution which the District Engineer has reason to believe may be interested in the property. A reasonable time will be allowed eligible agencies to submit an acceptable application. Figure 11–6 in ER 405–1–12 is a format for use in preparing the notice.

(e) *Advertising.* The proposed disposal of airport property will be advertised in at least two newspapers of general circulation within the state in which the airport is located. This advertising will insure notification to political subdivisions, tax-supported institutions, and others that the property is available. Property not classified as airport property will be advertised in accordance with the applicable requirements for the type of property. However, the first advertising of non-airport property adjacent to an airport will contain a statement that the property may be acquired under section 13(g) of the Surplus Property Act of 1944, as amended, for airport purposes, provided FAA approves such acquisition.

(f) *Form of Application*. Public agencies desiring to acquire surplus airport property will be required to submit an Application For Airport Property (Figure 11–7 in ER 405–1–12). The application includes the provisions of section 13(g) of the Surplus Property Act of 1944, as amended. If the applicant desires to enter and use the property prior to conveyance, such other terms and conditions considered desirable and necessary governing interim use of the property by the applicant will be included. The application will be signed by the applicant and forwarded to DAEN–REM for acceptance by proper authority in the Department. Evidence of the applicant's legal and financial ability to maintain and operate the property, as proposed, will also be submitted with the application.

(g) *Request for Modifications in the Provisions of section 13(g) of the Surplus Property Act of 1944, as Amended*. Should an applicant request modifications in the restrictions and conditions imposed by section 13(g) of the Surplus Property Act of 1944, as amended, the application and all pertinent data, including the FAA report, will be forwarded to DAEN–REM. If the requested modification is approved, the case will again be referred to FAA for its recommendation. If FAA does not concur in the modification, the fact will be reported to DAEN–REM for further necessary action.

(h) *Personal Property*. Non-industrial personal property of any other nature or description made available for disposal with an airport and located on it may be transferred with the airport on recommendation by FAA.

(i) *Meetings with Public Bodies.* Close cooperation will be maintained with FAA, and its representatives will be invited to participate in negotiations with public bodies in connection with transfer of airport property.

(j) *Land Survey*. In the event that a property survey is required to establish a correct metes and bounds description of the land to be transferred as airport property, a survey will be provided by the prospective transferee without cost to the Government.

(k) *Transfer Instruments.* The type of instrument used in conveying or transferring the Government's interest will vary according to the type of property

that may be involved, i.e., wholly Government-owned, mixed owned and leased, and leased property. However, instruments of conveyances will contain provisions required by the Surplus Property Act of 1944, as amended. Where a lease is involved and it is from other than the prospective transferee, such transferee will be required to obtain a long term lease on the land prior to conveyance of the Government-owned improvements. Execution of the lease to the prospective transferee and acceptance of the application by the Government should be handled simultaneously. Figure 11–8 in ER 405–1–12 is a format of quitclaim deed covering fee-owned and leased land (Airport Property). A quitclaim deed can be used to surrender leased land and convey the improvements and related personal property, or this can be done by supplemental agreement to the lease or other type of contract as considered desirable in accordance with local conveyancing practices.

(l) *Recordation*. All transfer instruments will be recorded by and at the expense of the transferee.

(m) *Compliance*. The Administrator, FAA, is responsible for determining and enforcing compliance of conditions and restrictions contained in any instrument of disposal of airport property, and is authorized to reform, correct, or amend any such instrument for such action as deemed necessary by him under applicable law. Care will be exercised to furnish copies of the application, classification, and instrument of conveyance to FAA so that it can properly perform its compliance function.

§ 644.429 Wildlife purposes.

(a) *Authority*. The military departments, when acting as a disposal agency, are authorized under the provisions of 16 U.S.C. 667b–d, in connection with land and improvements that:

(1) Can be utilized for wildlife conservation purposes by the agency of the state exercising administration over the wildlife resources of the state wherein the real property lies, or by the Secretary of the Interior; and (2) are chiefly valuable for use for any such purpose and which, in the determination of the GSA is available for such use, to convey such property to such agency without reimbursement or transfer of funds if the management thereof for the conservation of wildlife relates to other than migratory birds, or to the Secretary of the Interior if the property has particular value in carrying out the national migratory bird program. Personal property cannot be conveyed or transferred under this authority and only such improvements as the District Engineer determines to be necessary for proper execution of the applicant's program may be conveyed.

(b) *Notice of Availability*. If property is considered by the District Engineer to be valuable for wildlife conservation purposes, or if interest has been shown in acquiring the property for that purpose, notice of availability should be given to the agency administering state wildlife resources and to the Federal Fish and Wildlife Service if the property has particular value in carrying out the national migratory bird program.

(c) *Classification—Factors to be Considered and Determinations to be Made by Disposal Agency*. Should the property be classified as being chiefly valuable for purposes other than wildlife conservation purposes, such as agricultural, commercial, etc., the property may not be transferred to any State or to the Department of the Interior, under the authority cited in paragraph (a) of this section. However, should an application be received for conveyance of the property for wildlife conservation purposes, and the classification of the property indicates that it is chiefly valuable for other purposes, the classification, all pertinent papers and the application, together with the Division Engineer's recommendation, will be forwarded to HQDA (DAEN–REM), Washington, DC 20314. In addition to the determination that the property is chiefly valuable for wildlife conservation purposes and is available for such use, the Division Engineer will determine, when recommending that property be conveyed for such use, that the applicant has the legal and financial ability to acquire, operate and maintain the property as proposed, and will furnish information to DAEN–REM to

support his opinion. With proper safeguards, contaminated property can be made available for use in the wildlife conservation program.

(d) *Application.* Any state desiring to make application for property for wildlife conservation will be furnished copies of Application For Real Property For the Conservation of Wildlife with accompanying instructions for preparation. In evaluating the application, the responsible District Engineer will request review of the application by the Regional Office of the Fish and Wildlife Service, Department of the Interior, and will obtain that Service's recommendation as to the value of the property for wildlife conservation purposes.

(e) *Instrument of Conveyance.* Any instrument of conveyance of property for wildlife conservation will contain the restrictions and conditions required by 16 U.S.C. 667b, c, d. A Sample Deed for Conveyance of Land and Improvements For Conservation of Wildlife, with the statutory restrictions and conditions is provided as Figure 11–10 in ER 405–1–12.

(f) *Publication of Order.* The order required to be published in the FEDERAL REGISTER after disposal of the property under this authority will be processed for publication by the Chief of Engineers.

§ 644.430 Shrines, memorials, or religious purposes.

Pursuant to the provisions of FPMR 101–47.308–5, when the Department, acting as a disposal agency, determines that a chapel may properly be used in place, a suitable area of land may be sold with the chapel for use as a shrine, memorial, or for religious purposes. The sale price of land for this purpose will be its fair market value based on its highest and best use as established by an appraisal. Deeds conveying lands for such purposes will contain no restriction on the use of the land. Sale of the chapel building will be subject to the procedure and terms and conditions provided in §§ 644.472 through 644.500.

§ 644.431 Power transmission lines.

(a) *Authority.* Pursuant to the provisions of section 13(d) of the Surplus Property Act of 1944, as amended (50 U.S.C., App. 1622(d)), any state, or political subdivision thereof, or any state or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right of way acquired for its construction is needed for or adaptable to the requirements of a public or cooperative power project. Whenever any property is reported to GSA for screening, it will be assumed that GSA has screened Federal agencies for such purpose and no further screening with such agencies is necessary. Property not reported to GSA for screening will be screened in accordance with §§ 644.333 through 644.339. Screening with the appropriate state agencies will be conducted in all cases.

(b) *Procedure.* Whenever a State, or political subdivision thereof, or state or Federal agency or instrumentality certifies that such property is needed for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at its appraised fair market value. In the event that a sale cannot be consummated and the certification is not withdrawn, such facts will be reported to DAEN–REM in order that a determination of the action to be taken may be obtained from the Administrator, GSA. If no certification from a state or Federal instrumentality as outlined above is received after proper notice is given, the property may be disposed of in the same manner as other excess or surplus real property.

§ 644.432 Assignment to Department of Health, Education, and Welfare (HEW) or successor agencies for health or educational purposes.

(a) *Authority.* Under section 203(k)(1) of the Federal Property Act of 1949, as amended (40 U.S.C. 484(k)(1)) the Administrator, GSA is authorized, under such regulations as he may prescribe and in his discretion, to assign to the Secretary of HEW for disposal, such surplus real property as is recommended by the Secretary of HEW as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research. The Secretary of HEW is authorized under section 203(k)(1), subject to disapproval by the Administrator,

GSA after notice to him from the Department of Health, Education, and Welfare (HEW), to sell or lease surplus real property for such purposes. Pursuant to FPMR 101–47.308–4, a military department, when acting as disposal agency is authorized to assign property to HEW for disposal for education or health purposes and to disapprove, within 30 days after notice, any transfer of property proposed to be made by HEW for such purposes.

(b) *Notice to Department of Health, Education, and Welfare or Successor Agencies.* When real property is reported to GSA for screening prior to disposal by the military department, notification will be given HEW by the GSA Regional Office simultaneously with notification to the District Engineer that the property has been determined surplus to Federal requirements. The District Engineer will furnish such notification directly to the appropriate regional representative of the Department of HEW in the case of nonreportable real property immediately after he determines that the property is surplus to Federal requirements. Such notification will include the following information:

(1) A brief description of the property in sufficient detail to enable a determination of its probable suitability for uses authorized in section 203(k)(1) of the Act.

(2) When the property may be inspected and where and how arrangements may be made for inspection of the property.

(3) That the property will be withheld from advertisement for bids for a period of 20 days from the time of the notification unless the office submitting the notification is sooner informed in writing as to whether the property is needed for school, classroom, or other educational use, or for use in the protection of public health, including research. If within that time notice is received of a known potential need, the property will be held for an additional 45 days or until a certification of need or request for assignment is received, whichever occurs first.

(4) The District Engineer shall not give such notification to HEW on surplus buildings and improvements located on surplus leaseholds where their removal from the site will increase the Government's restoration obligations under the lease. Where such a situation exists and GSA is to screen the property prior to disposal by the Department, GSA should be advised to this effect. Where any surplus buildings and improvements (on leaseholds or fee-owned land) are available for off-site disposal, notification will be given HEW (unless time restrictions prohibit as set out in §§ 644.333 through 644.339 and §§ 644.348 through 644.367) but the notification will include the same restoration obligations as would be placed in a sale of the property to a private party.

(5) During the 20-day period, action will be taken preparatory to advertising the property for sale. All inquiries received concerning acquisition of the property for such purposes from the state, or local agencies, or qualified organizations seeking the purchase of available real property for health or educational purposes will be referred to the appropriate field representatives of HEW. If, within the 20-day period, HEW shall inform the District Engineer of any known potential requirement, the District Engineer will withhold disposition until a certification of need is received but not to exceed 45 days.

(6) Upon receipt from HEW of a certification that the property is needed for educational or public health purposes and a request from HEW for assignment of the property, if the property is available for such purposes, it will be assigned by the responsible District Engineer by letter addressed to the HEW office from which the request for assignment was received, citing the Act and GSA regulations as authority therefor. A copy of such letter of assignment will be furnished to the Regional Office of GSA.

(7) When notification of the proposed disposal is received from HEW, subsequent to assignment, if their is no reason for disapproval of the proposed disposition, notice from the responsible District Engineer to HEW of approval thereof is not necessary. Under section 203(k)(1), approval is automatically given in the absence of notice of disapproval within 30 days from the date of notification of the proposed disposal. If in the request for assignment HEW

furnishes the name of the proposed transferee and states that an application from the transferee is on file and that the proposed use by the transferee is one authorized under section 203(k)(1), the District Engineer, in making the assignment to HEW, may state that no objection is interposed to the proposed transfer of the property.

(8) GSA has advised that it is not anticipated that the Corps of Engineers, in acting as the disposal agency, would investigate each request to it by the Department of HEW, because to make such investigations in each case would clearly duplicate the function assigned to the Department of HEW. Doubtful cases would only arise in connection with property for which the highest and best use is industrial or commercial, or where further study may be required by the Federal Government concerning future requirements for the property. In accordance with a further suggestion by GSA, where there is a reasonable doubt as to the propriety of an assignment to HEW or a proposed disposal by it, the request will be referred to GSA for final decision. Such referrals will be made through DAEN–REM.

(9) The District Engineer making the assignment of the property will request HEW to furnish two copies of the sales contract. Upon receipt of these copies, together with a request from HEW that the property be transferred, custody will be given to the grantee or transferee named in the sales contract.

§ 644.433 Surplus disposal to private parties.

General. Sections 644.435(b) through 644.440 cover general procedures for the sale of surplus fee-owned land and easement interests and includes actions to be taken preliminary to proceeding with the appropriate sale procedures set forth in §§ 644.540 through 644.557.

§ 644.434 Cottage site disposal.

Disposal of lots for cottage site development and use is authorized by Pub. L. 84–999 (16 U.S.C. 460e). No new allocations of land for private cottage use will be made. The policy concerning phasing out of existing cottage site areas is set out in ER 1130–2–400. The DE has delegated authority to sell or lease cottage sites. Contract of Sale, ENG Form 3297–R, will be used.

§ 644.435 Procedure.

(a) *Fee-owned land.* When fee-owned land for which the department is acting as disposal agency has been found to be surplus to requirements of the Federal Government, has been classified under § 644.426 and disposal is not made to a state, political subdivision, etc., the property will be offered for sale to the highest responsible bidder, except under special circumstances provided in §§ 644.540 through 644.557.

(b) *Easements.* Easements that are readily assignable will be disposed of in the same manner as fee-owned land. Easements will usually be disposed of with land to which they are appurtenant. Easements may be disposed of to the owner of land which is subject to the easement (the servient estate). A determination should be made as to whether the disposal should be with or without reimbursement to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost to the Government. The amount of such reimbursement should be the appraised fair market value of the easement. In the case of disposal of an easement acquired for the deposit of spoil material a minimum charge of $225.00 will be imposed where relinquishment is being accomplished for the benefit of the owner of the servient estate and where no direct benefit will inure to the Government. A statement as to the commercial value will be made when recommending an easement for disposal. The circumstances and factors leading to these determinations shall be documented and retained in the files (FPMR 101–47.313–1).

§ 644.436 Appraisal.

Under the usual circumstances prompt action will be taken to appraise surplus property concurrently with its classification. Appraisals will not be undertaken for property which has been or is likely to be classified for disposal for any of the following purposes: airport; wildlife conservation; public highways, streets and alleys; disposal to the District of Columbia; and property assigned to HEW for disposal.

Property that is to be disposed of for other than the above listed purposes will be appraised.

§ 644.437 Disposal plan for fee-owned land.

A disposal plan will be made for each surplus property. It will include the District Engineer's recommendation of the method or methods of disposal and the reasons therefor; for example, whether improvements or minerals and lands should be sold separately; improvements cannibalized; whether the property should be subdivided; the media for advertising; and other pertinent factors. In addition, the following will be included as part of the disposal plan:

(a) Description and map of the lands.

(b) Description of buildings and other improvements.

(c) Appraisal made in accordance with §§ 644.41 through 644.49, unless exempted by § 644.436.

(d) Information as to when, from whom, and how the property was acquired.

(e) Information as to the estate which the Government has in the land, and reservations and exceptions in and to the Government's title. Outstanding interests granted by the Government or reserved or excepted in the acquisition of the lands will be stated with particularity. The map or plat will delineate any grant, exception, or reservation, such as telephone and telegraph, electric transmission, oil, gas and water lines.

(f) Purchase price of land, buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(g) If there is an indication of valuable minerals, such statement will be made with full explanatory data.

(h) Where the estimated value of the land together with improvements and related personal property is in excess of $1,000, the disposal plan will be submitted to DAEN–REM for approval.

§ 644.438 Disposal plan for easements.

When recommending disposal of a surplus easement the District Engineer will submit the following:

(a) Information as to when and from whom the easement was acquired.

(b) The consideration paid therefor.

(c) Identification of the installation to which it is appurtenant.

(d) If the easement has no commercial value, the amount that should be paid by the owner of the servient estate, representing a rebate on the purchase price, or the amount paid for severance damages will be specified. (For example, if the easement was acquired for a 15-year period and the price paid therefor was substantial and one year after acquisition it is returned to the owner of the servient estate, an effort should be made to obtain a rebate on the purchase price although the easement has no commercial value. The same would be applicable to the payment for severance damages).

(e) If the owner of the servient estate, or other prospective grantee, is not willing to pay the appraised value in consideration of the release of an easement acquired for a substantial consideration, all action to release the easement will be held in abeyance until such time as an adequate consideration can be obtained for the release. Note the minimum payment for release of spoil easments discussed in paragraph (b) of § 644.435.

§ 644.439 Sale and conveyance.

Sales procedure, including advertising, will be in accordance with §§ 644.540 through 644.557. Normally, conveyance will be by deed, prepared and executed as provided in § 644.441.

§ 644.440 Application of antitrust laws.

Section 207 of the Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more, or patents, processes, techniques, or inventions, regardless of costs, shall not be disposed of until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Prior to obligating the Government on any such disposal, the District Engineer will furnish DAEN–REM information on the probable terms or conditions. DAEN–REM will use this information as the basis for a request to the

Attorney General for advice (FPMR 101–47.301–2).

§ 644.441 Preparation and execution of deeds.

(a) *Authority to Execute.* All conveyances of fee ownership and other permanent interests in land which the Army and Air Force have authority to convey under the statutory authorities and delegations set forth in §§ 644.400 through 644.443 will be executed by the Secretary of the Army, for Army land, and by direction of the Secretary of the Air Force, for Air Force land. Conveyances of surplus property that have been assigned to HEW for disposal will be executed by officers of that department.

(b) *Form of Deed or Instrument.* Conveyances of fee-owned land and easements shall be by quitclaim deed prepared in conformance with local law and practice except where it is found that another form of conveyance is necessary or desirable to obtain a reasonable price for the property, or to render the title marketable, or for other reasons. Appropriate recommendations will be forwarded to DAEN–REM. Forwarding correspondence should contain information as to the requirements of local law for witnesses, acknowledgment, authentication of acknowledgment, and other special requirements. The instrument of conveyance should contain a statement that the requirements of 10 U.S.C. 2662 have been met, or that the conveyance is not subject to these requirements.

(c) *Authority for Conveyance.* Authority for conveyance will be recited in the granting clause. Conveyances under the Federal Property Act will recite:

* * * under and pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the delegation of authority to the Secretary of Defense from the Administrator of General Services Administration (41 CFR 101–47.601) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 FR 7113).

Conveyances to states and their instrumentalities under the special statutes, listed in §§ 644.425 through 644.432, will recite the special statutes, as continued in effect by the Federal Property Act and the delegations. Conveyances to states for wildlife conservation purposes under Pub. L. 537, 80th Congress (§ 644.429) will cite the special act and recite that the property has been determined surplus under the Federal Property Act and delegations thereunder. Conveyances releasing the restrictions contained in a flowage easement prohibiting the construction and maintenance of structures for human habitation should cite as authority for the conveyance the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the Federal Property Management Regulations (101–47.313–11).

(d) *Conditions in the Conveyance.* The deed will contain the reservations, restrictions, or conditions, required by: (1) The directive which authorized the disposal; (2) any special acts under which the property is conveyed; and (3) by any contract of sale, agreement to extend credit, or relocation contract, pursuant to which conveyance is made.

(e) *Acceptance by Grantee.* Where the instrument of conveyance imposes obligations on the grantee, the instrument will be executed and excepted by or on behalf of the grantee prior to forwarding for execution. If the grantee is a corporation or body politic, the instrument will contain a certificate attesting to the authority of the officer executing the instrument to act for and bind the corporation or body politic, and that his signature is genuine. Where a resolution or other special action is necessary to legally bind the grantee, a copy will be attached to the instrument.

(f) *Execution of Deed.* (1) The Division Engineer will forward to DAEN–REM a draft of the deed, prepared in final form, together with copies of as many of the items listed below as are appropriate depending on the nature and purpose of the conveyance, any other information necessary for a complete understanding of the case, and the remarks and recommendations of the Division and District Engineer. Upon approval of the proposed disposal by DAEN–REM, the deed will be forwarded to higher authority for execution and returned to the District Engineer for delivery and distribution.

(2) Items to be forwarded with draft of deed proposed for execution, as appropriate:

(i) Real Property Classification, ENG Form 1825.

(ii) Application or plan for use and procurement with recommendations and determinations of other interested Federal agencies when the conveyance is under one of the special acts listed in §§ 644.425 through 644.432.

(iii) Disposal plans.

(iv) Appraisal where not included in paragraph (f)(2)(iii) of this section.

(v) Statement on advertising conducted.

(vi) Abstract of bids.

(vii) Relocation contract or change agreement.

(g) *Distribution of Deeds.* Deeds will be delivered by the District Engineer and recorded by or at the expense of the grantee. Upon delivery and recordation of any deed conveying Army, Air Force, or nondefense property, the District Engineer will conform two copies by endorsing thereon the date and manner of delivery, and the date, time and place of recordation in the public land records. One conformed copy will be forwarded to HQDA (DAEN–REM) WASH DC 20314, and the other conformed copy to HQDA (DAEN–REP) WASH DC 20314. This requirement extends to copies of deeds executed by other disposal agencies and furnished District Engineers pursuant to FPMR 101–47.307–3(b). Two additional copies of deeds delivered by District Engineers will be conformed and furnished any other Federal agency charged with compliance enforcement of any reservations, restrictions, or conditions in the deed.

§§ 644.442—644.443 [Reserved]

DISPOSAL OF LEASEHOLDS AND LEASEHOLD IMPROVEMENTS

§ 644.444 Authority.

Surplus leasehold interests in real property are disposed of under authority delegated by the General Services Administration (GSA) to the Department of Defense (DOD). DOD has redelegated this authority to the military departments. DEs, within the limits of the authority delegated, have been authorized to terminate leases, execute agreements in settlement of restoration obligations, and perform necessary restoration work required by lease terms, directly or by contract, in accordance with the provisions stated in §§ 644.444 through 644.471. Exceptions are where: (a) Under the terms of the lease the leasehold is transferable to third parties or Government-owned improvements on leased airport or other special types of leased property have an in-place value to the lessor for airport or other special purposes; or (b) the leasehold or Government-owned improvements may be disposed of to eligible public agencies under special statutes (FPMR 101–47.4905), in which cases the procedures provided in §§ 644.400 through 644.443 will be applied to the extent applicable. Disposals within the scope of the above exceptions require the prior approval of DAEN–REM.

§ 644.445 Procedure for termination of leases.

When leased premises are no longer required for use by the Government, a notice of termination will be given to the lessor in accordance with the terms of the lease, effective as of the date of vacation. The termination notice will be served sufficiently in advance to allow time for compliance by the Government with terms of leases providing for removal of improvements and restoration of premises. Where a lease does not contain provision for continuing renewal without notice and will automatically expire, the Government is not required to give notice when it intends to surrender the premises at the expiration of the lease. However, the lessor should be informed, as far in advance as possible, of the Department's intention to vacate, in order that he may plan for a new tenant for other use of the premises. Where a lease provides for a continuing renewal without notice, the DE will ascertain in advance of the beginning of each fiscal year whether the using service has need during the next fiscal year for the premises. When the premises are no longer required, a notice of termination will be served in accordance with the terms of the lease. In the event the lease does not provide for termination by the Government, but

the lessor will consent to termination, either in its entirety or partially, a supplemental agreement should be entered into to terminate or amend the lease as of the date the premises will be vacated, Government improvements removed, and restoration completed.

(a) *Forms of Notice of Termination.* Where leases provide for restoration, Notice of Cancellation (Restoration) will be prepared in sextuplet in accordance with Figure 11–11 in ER 405–1–12. Notice of Cancellation, Figure 11–12 in ER 405–1–12, will be used for leases which do not provide for restoration or for leases where written notice requiring restoration has been submitted by the lessor prior to termination. Notice of termination will be prepared on the letterhead of the DE concerned, who will assign his own form-letter number.

(b) *Manner of Serving Notice of Cancellation.* The Notice of Termination must conform to requirements of state law, and will, whenever possible, be served personally upon the lessor. In some states, to be legally effective personal service is mandatory, unless expressly waived. The lessor will be requested to execute the acknowledgment of receipt of notice on the form. Where the service is effected by registered or certified mail, a return receipt will be requested and a sufficient number of days (in addition to the stipulated period of notice) will be allowed for transmission and receipt of notice. The return receipt properly signed will be evidence that full notice required by the lease has been given. Should the owner refuse or fail to acknowledge receipt of the notice, the officer serving the notice will so certify thereon, giving the date and method of service. In the case of an absentee lessor, where time will not permit use of certified or registered mail for effecting service, notice will be given by telegram to be delivered, not telephoned, to the addressee. In the case of notice by personal service, any available Army facility or personnel in the lessor's locality may be used.

(c) *Distribution of Notice of Termination.* The original notice of termination will be delivered to the lessor; one copy to the finance and accounting officer who pays the rental; one copy to the using service; and one copy to the DE office files.

§ 644.446 Vacation and protection of premises.

The DE will take action to insure that the premises are vacated by the using service on or before the date specified in the termination notice (or the date of expiration of the lease where formal notice is not required), and will assure provision is made by either the using service or the DE, as appropriate, for proper protection of the property pending the transfer of custody to the lessor pursuant to §§ 644.368 through 644.375 and AR 405–90.

§ 644.447 Joint survey of premises.

(a) *When Required.* As soon as practical after restoration is requested by the lessor, a terminal condition report to reflect the condition of the leased property as of the termination of the lease, and a terminal survey to determine the extent of restoration required, if any, will be prepared. The lessor will be invited to have his estimators accompany the survey party. The lessor's estimates of restoration costs should be obtained promptly, and included in the terminal survey for purposes of comparison in accordance with paragraph (c) of § 644.454. Survey and condition reports will not be limited to items for which the lessor specifically requests restoration, but will include all items which the DE determines should be restored in order to fulfill the Government's obligation under the lease.

(b) *Contents.* The report will show, in detail, the work items necessary to place the premises in as good a condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

(c) *Housing Leases.* The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased

housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

§ 644.448 Limits on government obligation to restore.

The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

(a) *Restoration Not to Exceed Fee Simple Value.* The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

(b) *Where Estimated Cost of Restoration Exceeds Diminution in Value.* When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that,

> This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished

(28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

§ 644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held in the case of Smith vs. United States, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B–48678, 10 April 1945, the Comptroller General expressed the following views along this line:

(a) In leases pertaining to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a

stipulation excepting restoration from the provisions of the release may be regarded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

(b) In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

(c) Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

(d) As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

§ 644.450 Items excluded from usual restoration obligation.

Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

(a) Foundation work.

(b) Waterproofing or membraning.

(c) Exterior tuck pointing.

(d) Cleaning or repair of catch basins, cesspools, or manholes.

(e) Repair of: (1) Interior unfinished walls.

(2) Unfinished hollow tile, concrete block, or gypsum block walls.

(3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).

(4) Insulating materials in walls necessitated by leakage in walls or roofs.

(5) Damage to plaster caused by leakage in wall or roof.

(6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighting, caulking or sealing.

(7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.

(8) Structural steel or iron.

(9) Fire escapes.

(10) Heating systems.

(11) Plumbing systems.

(12) Ventilating systems and air conditioning systems.

(13) Power plants.

(14) Electric wiring.

(15) Lighting fixtures (or replacement).

(16) Sprinkler systems.

(f) Settling or subsidence.

(g) Other structural repairs to buildings or equipment.

§ 644.451 Nature of required restoration.

Restoration by the Government will ordinarily include the following:

(a) Wear and tear beyond that which is reasonable and ordinary.

(b) Damage due to negligence by Government personnel.

(c) Restoration or reinstallations necessitated by alterations or removals by the Government.

(d) Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decontamination of chemically contaminated lands or improvements. (See §§ 644.516 through 644.539).

§ 644.452 Minor restoration cases—determining extent of restoration required.

(a) In minor restoration cases, ENG Form 1440A–R, Joint Terminal Condition Survey, will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 1440B–R, Cost of Restoration. In order to effect economies, the DE may arrange for the utilitization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

(1) The initial cost of Government improvements or alterations did not exceed $5,000; and

(2) The net salvage value of Government improvements remaining does not exceed $1,000; and

(3) The cash payment to the lessor in lieu of restoration does not exceed $1,000; and

(4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

(b) *Preparation of ENG Form 1440–R.* Use of ENG Form 1440B–R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

(1) The procedure hereunder envisions the use of both ENG Form 1440A–R and ENG Form 1440B–R, which complement each other.

(2) The use of ENG Form 1440B–R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.

(3) Distribution of these forms, together with any supporting exhibits, will be accomplished in the same manner as set forth in paragraph (b) of § 644.460.

§ 644.453 Major restoration cases—determining extent of restoration required.

(a) *Engineer Estimate and Appraisal.* Any restoration case not covered by the definitions of minor restoration case in paragraph (a) of § 644.452 is a major restoration case. A complete engineer estimate and appraisal will be prepared by the DE for use in negotiating a cash settlement, or to determine the cost of restoration, if the work is to be performed by the Government. ENG Form 1440–R, Cost of Restoration, will be used for this purpose. A copy of this form will be transmitted to the General Accounting Office in support of settlements made with landowners in the case of military property and contains the minimum data required by that office. Such transmittal is not required when civil works property is involved. In order to afford a measure of flexibility, ENG Form 1440–R is divided into five parts, each relating to specific factors, to be used as conditions may require.

(b) *Preparation of ENG Form 1440–R.* Comments and instructions for preparation of ENG Form 1440–R are contained in the following paragraphs which are keyed to the item numbers on the Recapitulation sheet, part I of the form:

(1) ''1'' to ''6'' Self-explanatory.

(2) ''7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures and alterations: (part 4).'' The General Accounting Office requires that, in all cases involving the relinquishment of Government-owned improvements to lessors in lieu of restoration, and in any other cases where a contract is entered into between the Government and another party to transfer improvements, the original cost of the improvements be given. If not ascertainable, an estimate should be submitted. In exceptional cases, where, because of the circumstances or expense of the work involved, neither

the original cost nor a reasonably accurate estimate can be given, an explanation of the facts and circumstances is required. Where structures have been built under contract, or improvements made under contract, a citation to the contract under which the work was performed should be submitted with the original cost statement, estimate, or explanation.

(3) ''8. Estimated Market Value, (Value in place of Government-owned improvements, fixtures, and alterations): (part 4).'' An estimate will be made of the current market value of the buildings or improvements in place. In those cases where it is indicated that the Government-owned buildings or improvements located on leased lands may materially enhance the value of the leased site, an appraiser will estimate the market value of the fee title to the leased area in its unrestored condition. He will also separately estimate the market value of the site, assuming restoration as provided in the existing lease. The difference between the fee title value and restored land value will be reported as the ''value in place'' of the improvements to be sold or otherwise disposed of. ''Value in place'' is defined as the amount by which the improvements involved enhance the market value of the leased site. This value will serve to establish the top sales price expectancy in negotiations with the landowner.

(4) ''9. Gross Salvage Value of Government-owned property: (part 4)''. The ''gross salvage value'' is the highest price obtainable in the open market for Government-owned improvements when sold for use elsewhere than on the leased premises, assuming that no expense to the buyer is involved in the dismantling and/or removal of the improvements from the leased property to the nearest probable market or location of future use. The estimate of gross salvage value should be made in accordance with established property appraisal procedures. Because market demand usually determines the highest and best use to which the components of a group of improvements will be put (e.g., whether a building will be worth more on the market for moving intact to a new site for continued use as a building, or worth more as a stockpile of used construction material), it is important to consider not only prevailing market prices and demand for used construction materials in the vicinity by contacting sources such as local building trades, wrecking companies, used material dealers, etc., but to also give consideration to possible interest by house moving and construction companies and individuals who might utilize improvements intact. Due consideration should also be given in making the estimate to the effect that such facts as the original cost of the improvements, the original cost of the materials therein, and the deterioration or depreciation of the materials in place might have upon the market value.

(5) ''10. Estimated Cost of Dismantling and/or Removal of Government-owned Property: (part 4).'' The estimated dismantling cost and/or cost of removal will be itemized in the appropriate column opposite the itemized listing of improvements on the ENG Form 1440–R (part 4), and the total will be reflected on the recapitulation sheet (part 1). The dismantling cost is the amount of expenditure necessary to accomplish dismantlement in a manner providing the greatest net return to the Government. Net return is the value of the improvements when detached or dismantled, less the cost of dismantling or detaching, and less the cost of removal. The cost of removal is the cost of moving the detached or dismantled improvements to the nearest probable market or the nearest installation of the Department having adequate storage space. In cases of frame buildings having concrete or similar permanent-type floors or foundations, the cost of removal of such floors or foundations will not be included as an item of dismantling and/or removal cost. Instead, it will be treated as an item in the estimated ''Cost of Restoration other than Cost of Dismantling and Removal'' (Item 12). In developing estimates of gross salvage value and costs of dismantling and/or removal, inquiry should be made of experienced tradesmen, used material dealers, wrecking contractors, etc., familiar with the local market for the types of materials and services involving the

current costs of loading, hauling, unloading, cleaning, stockpiling and other economic factors contributing to the current local market value of similar materials in useable form.

(6) ''11. Estimated Net Salvage Value of Government-owned Property: (part 4)''. This amount is obtained by subtracting the estimated cost of dismantling and/or removal (Item 10) from the estimated gross salvage value (Item 9).

(7) ''12. Cost of Restoration other than Cost of Dismantling and Removal: (part 3)''. From information developed by the joint survey of the property, § 644.447 of this part, it is the responsibility of the real estate officer, or his representative, to advise the personnel responsible for preparing the restoration cost estimate of the items which will require restoration, repair or replacement under the terms of the lease. A brief statement as to the probable cause of damage, in excess of ordinary wear and tear, or resulting from other than circumstances over which the Government has no control, will be included in the supporting data.

(8) ''13. Total Cost of Restoration: (Item 10 plus Item 12)''. The estimates of cost under Items 10 and 12 will be based on sound estimating practices generally employed for the type of work involved. The estimates will be predicated on performance of the work by contract and, therefore, consideration will be given to justifiable allowances for contractor's profits, insurance, employees compensation payments, and overhead.

(9) ''14. Net Cost of Restoration: (Item 9 minus Item 13)''. In those cases where the cost of dismantling and/or removal of Government-owned improvements (as defined in Item 10), and the other costs of restoration (as defined in Item 12), exceed the gross salvage value (as defined in Item 9), the difference is a minus quantity and constitutes the maximum amount of money which the Government can pay the lessor, in addition to transferring all improvements to him in lieu of restoration and paying rent during the estimated period of restoration (provided such improvements are not considered to have an ''in place'' value). If this is a plus quantity, it represents the minimum amount of cash that the Government can accept from the lessor after transferring to him all items of property or equipment shown in the report, less the allowance for rental during the estimated period of restoration.

(10) ''15. Approximate Time Required for Actual Salvaging and Restoration Operations''. So long as the owner is deprived of use of his property he is entitled to rental stipulated in the lease. A fair allowance will be made in a settlement with the lessor to cover a reasonable time required to fit the premises for use. If all improvements are to be left in place, it may well be that no allowance for rental will be required by the lessor for time required for salvaging.

§ 644.454 Negotiating restoration settlements.

Negotiated settlements in lieu of performance of actual restoration work by the Government are ordinarily favored because they most satisfactorily achieve the objectives of fulfilling the Government's obligations under the lease in the most efficient and economical manner, recouping the greatest amount of the Government's investment in improvements to leased property and maintaining good public relations in the acquisition and disposal of leaseholds. However, because of variable circumstances, this principle cannot be stated as an inflexible rule applicable to every case. It is the responsibility of the DE to carefully consider all possible approaches within the scope of this chapter and select the best course of procedure in each case.

(a) *Financial Limitations Which Preclude Actual Restoration.* In view of the limitations of the Government's restoration obligations to amounts not in excess of the fee value of the leased property, or the difference in values of the leased property with and without restoration, actual performance of restoration work is precluded where these amounts would be exceeded, and a settlement in lieu of restoration is in order in amounts not to exceed the limitations indicated.

(b) *Settlement Where Property Enhanced in Value by Improvements.* Where the leased property has been enhanced

in value by the Government's improvements, no restoration should be performed nor payment by the Government made in lieu thereof. Instead, effort should first be made to obtain from the lessor a cash payment to the Government equal to the in place value of the improvements, together with a full release of the Government from any restoration obligations. If the lessor is not willing to pay the in place value, but will offer a lesser amount in excess of the estimated net salvage value, settlement may be reached on that basis. If the lessor will not agree to make payment of any amount, or will offer only an amount which is less than the net salvage value of the improvements, consideration should be given to selling the improvements for removal and accomplishing any remaining restoration by payment in lieu thereof or by actual performance of the work. If it becomes necessary or advisable to arrange for separate sale of any or all of the improvements, the sale should be accomplished in accordance with §§ 644.540 through 644.557. The terms of sale in such case will require the removal of the improvements on or before the expiration or termination of the lease and contains any other special requirements applicable to the particular case, including site restoration. Bids received should be compared with the highest price offered by the lessor, due consideration being given to the cost of restoration, if any, which would remain after removal of the improvements. It must always be borne in mind that the disposition of public property to private parties must be at prices which can be shown to be in the best interests of the Government.

(c) *Reaching Agreement on Estimates of Cost.* The terminal survey and condition reports specify the items to be restored and the lessor's estimate of cost. Those items reflected on the ENG Form 1440–R (part 3) afford comparison between the lessor's and the Government's estimates. Where there is a variance in the estimates and the lessor's total estimate is lower, effort will be made to settle on the basis of his estimate. If the lessor's overall estimate is higher than the Government's, effort will be made to reach agreement on acceptance of the Government's total estimate. If the lessor's estimate is substantially higher on specific items, it may be desirable to disclose the basis on which the Government's estimate is predicated in order to demonstrate its reasonableness. The Government's estimate of cost for items of restoration may be made available to the lessor upon request. When the lessor requests items of work not shown on the Government's estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN–REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

§ 644.455 Claims for loss or damage of personal property.

In some cases, owners have been allowed to store personal property, owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from all liability except for claims for

damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease, and the lessor advised that he may submit a claim for the amounts which he considers due him.

§ 644.456 Rent during the period required for restoration.

A sufficent period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

§ 644.457 Settlement where part of the premises is surrendered.

Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

§ 644.458 Documenting lease terminations and restoration settlements.

In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Government improvements removed. Releases will also be obtained as indicated in § 644.462.

(a) *Form to be Used.* Releases will be executed, in triplicate, on ENG Form 232–R, Release (Corporation), or ENG Form 231, Release (Partnership), according to whether the lessor is a corporation or partnership. If signed by an attorney or agent, evidence of authority should be attached to the release. If the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11–16 in ER 405–1–12. Distribution of releases will be accomplished in the same manner as set forth in § 644.460.

(b) *Qualified Release.* In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form.

§ 644.459 Preparation of supplemental agreements effecting settlement.

The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B–63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items; instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

§ 644.460 Supplemental agreement assembly.

(a) *Composition.* Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

(1) Completed Notice of Termination.

(2) ENG Form 340 (Supplemental Agreement Accepting Proposed Restoration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required.

(4) Joint terminal survey and condition report.

(5) ENG Form 1440–R, or 1440A–R and 1440B–R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

(b) *Distribution*. An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

§ 644.461 Payment for restoration or settlement in lieu of restoration.

Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

§ 644.462 Performance of restoration work by district engineer—extension of time.

Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or by contract, within the limitations outlined in this Subpart. Any contract entered into for such work should provide for required restoration work to be performed on or before the determined effective date of termination of the lease. A complete record of the items of work performed and the costs thereof will be kept. If the lessor, prior to commencement of the work, is not agreeable to executing ENG Form 340, DA Supplemental Agreement Accepting Proposed Restoration, efforts will be made, upon completion of the work, to obtain a release on ENG Forms 232–R, or 231, or on ENG Form 341 in the event of a cash settlement for that part of the restoration not performed. Where the Government is obligated to perform restoration and remove improvements, and it cannot be accomplished by the Government prior to the effective date of termination, a supplemental agreement will be prepared, antedating the effective date of termination, for such periods as may be required to effect restoration and to remove improvements, if the lessor is unwilling to terminate the lease and rental thereunder, with the reservation that the Government will have a right upon the premises for the purpose of performing restoration, conducting sales of improvements thereon, or doing similar acts related to restoration.

§ 644.463 Termination and settlement of leasehold condemnation proceedings.

(a) *Leasehold Condemnation Termination Assembly*. When leasehold estates in land, or other similar limited estates or terms for years, acquired or in the process of acquisition, have been determined surplus a prompt report will be made to DAEN–REM containing the following items of information as appropriate and necessary to a full understanding of the proposed disposition action:

(1) Name of project and using service.

(2) Style and civil number of the condemnation proceedings in which the land is involved.

(3) Particular tract or tracts involved.

(4) A citation of the authority pursuant to which the surplus status has been determined.

(5) Three copies of ENG Form 1440–R, or 1440A–R and 1440B–R.

(6) The proposed date of vacation of premises by Government.

(7) The term condemned and rights of the Government as to extension and cancellation thereof.

(8) Whether a declaration of taking, or supplement thereto, has been filed and the amount of deposit, if any.

(9) Whether an award or order for payment has been made, and the amount of the owner's withdrawal, if any.

(10) The estimated rental cost through the end of the term acquired in the condemnation proceeding.

(11) The estimated fair rental value of the land for the period of occupancy by the Government, including time for restoration.

(12) Recommendation as to the advisability of abandoning the proceeding.

(13) Request for termination of condemnation proceeding.

(b) *Action by Chief of Engineers.* DAEN–REM will review the termination assembly and settlement proposal recommended and, if approved, recommend to the Department of Justice a basis for settlement at the same time requesting the Department of Justice to move for termination or conclusion of the proceedings.

§ 644.464 Negotiating stipulation where proposed settlement not acceptable.

Should the court overrule the motion for abandonment, or should it appear that claims for damages will be interposed by the property owner, the responsible DE and the Department of Justice representative will negotiate with the owner for the purpose of obtaining his consent to the abandonment of the condemnation action. The Government will agree to pay the owner a sum representing the rental value of the premises for the period of occupancy by the Government, plus the cost of restoration as determined under §§ 644.452 and 644.453. Such estimate will include the value of personal property, buildings, crops, and other property damaged, destroyed or lost by the Government. DAEN–REM upon recommendation of the DE will request the amendment of the proceeding to include the taking of any property for which compensation is to be paid. The same criteria for settlement with lessors as under a negotiated lease will govern. In the event the landowner will not agree to settle, his best offer will be submitted to DAEN–REM, with the DE's recommendation, for consideration. If a tentative settlement is reached, the terms will be included in a stipulation to be filed in the condemnation proceedings, after approval by DAEN–REM and the Department of Justice, which stipulation will specifically provide:

(a) That the property owner releases and relinquishes all claims of any nature whatsoever which have arisen, or may arise, out of the Government's occupancy of the property; and

(b) That the owner consents to the abandonment and dismissal of the condemnation proceedings. Where the settlement amount is to be paid directly to the owner by the DE in lieu of deposit in the proceedings, the stipulation will so provide.

§ 644.465 Physical restoration where stipulation not obtained.

If such stipulation is not obtainable, then, whether or not a declaration of taking has been filed, the owner will be requested to designate, in writing, the restoration for which he believes the Government is liable. The Government will restore the property to the condition existing at the time of first entry by the Government, except for reasonable and ordinary wear and tear, damage due to acts of God, or circumstances over which the Government has no control. The cost of restoration or settlement in lieu thereof will be limited as outlined in this subpart.

§ 644.466 Release and record of physical restoration.

The responsible DE, upon completion of restoration, will make every effort to obtain a release of further claims for damages. A complete record of all items of restoration and the cost will be kept for use at the final hearing in

condemnation or in any collateral proceedings, in the event a release is not obtained. Where litigation is anticipated, photographic evidence of work peformed will be obtained.

§ 644.467 Condition reports.

Survey and inspection reports covering the real estate, and inventory and condition reports covering the personal property located therein, made prior to first entry by the Government under condemnation proceeding, will be compared with the condition shown by similar reports made when the using service vacates the property.

§ 644.468 Settlement of claims.

Claims for damages or restoration filed in condemnation cases, when practicable, will be settled in the condemnation proceeding to avoid separate suit by the owner to recover compensation to which he may be entitled. In such cases request will be made of DAEN–REA–C to have the proceeding amended to enlarge the issues to include restoration.

§§ 644.469—644.471 [Reserved]

Disposal of Buildings and Other Improvements (Without the Related Land)

§ 644.472 Authority.

Under authority vested in the GSA by the Federal Property Act, and the delegation of such authority made by GSA in FPMR 101–47.302–2, the Department of the Army is designated as the disposal agency for the following property:

(a) Leases, permits, licenses, easements, and similar real estate interests held by the government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(b) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

§ 644.473 Methods of disposal.

Excess buildings and other improvements may be disposed of by the following methods:

(a) By demolition for utilization of salvage materials in the overall Army or Air Force construction or maintenance program. Screening with other military departments is not necessary for this purpose.

(b) By transfer to another Federal agency.

(c) By assignment to the Department of HEW for disposal for health or educational purposes pursuant to section 203k(1) of the Federal Property Act (FPMR 101–47.308–4).

(d) By sale intact for removal from site to the most appropriate of the following, according to the circumstances:

(1) Eligible public agencies (§§ 644.400 through 644.443 and §§ 644.540 through 644.557).

(2) Boy Scouts of America (§§ 644.540 through 644.557).

(3) Military chapel buildings and chapel equipment to nonprofit organizations for use, first as a shrine or memorial and, second as a denominational house of worship.

(4) Owner of the underlying land as a part of restoration settlement where disposal of a leasehold is involved.

(5) An emergency plant facilities contractor.

(6) The general public, through competitive bidding, unless special circumstances warrant a negotiated sale for a specific purpose.

(e) By donation, abandonment or destruction.

§ 644.474 Determining method of disposal.

DE's are designees of the Chief of Engineers under AR 405–90 to determine the method of disposal authorized by law or regulations which is most advantageous to the Government. Where alternatives are presented, there will be an affirmative finding that the method of disposal approved is most advantageous. In the exercise of this authority, due consideration will be given to the effect of particular methods of disposal on safety and sanitation in the area, the proposed or probable future utilization of Government-

owned sites by the Government, or in the case of leased lands, the restoration obligations of the Government under the lease. In order to assure consideration of these factors, disposals by transfer to other Government agencies or by sale intact will be brought to the attention of the installation commander or his representative prior to initiation of disposal action. Reasonable requirements for site clearance consistent with the foregoing criteria should be favorably considered and disposal conditioned accordingly, notwithstanding the fact that such action may result in a greater burden to transferee agencies or, in the case of disposal by sale intact, may result in a reduction in the monetary return which might be reasonably expected in a sale involving less stringent site clearance requirements. DAEN-REM will be informed of any instances of excessive or unreasonable requirements with respect to site clearance. The DE will determine by inspection and survey the method to be used in disposal of buildings and improvements.

§ 644.475 Excessing Army military and Air Force property.

The procedures for placing buildings and improvements in excess status are set forth in AR 405–90 and AFR 87–4. In instances of land acquisition where buildings and improvements were acquired incident thereto, DEs are designated by the Chief of Engineers under AR 405–90 to make disposition of this property. Coordination with the installation commander concerned is required. When, under AFR 87–4, the responsible DE is called upon by the Air Force Command to furnish an estimate of the value of buildings and improvements for the purpose of determining the approval authority for excessing the property, no formal appraisal will be made. If, in his opinion, the total property exceeds a value of $50,000, he will furnish only a rough estimate of its value in round figures. If the property is, in his opinion, of a value of $50,000 or less, he will limit his statement to this fact and will not specify an estimated valuation.

§ 644.476 Excessing civil works property.

The DE are authorized to approve the disposal of buildings and improvements acquired incidental to the acquisition of land in reservoir areas, regardless of the original cost thereof, when they are in the way of authorized construction or when the land upon which they are located is to be permanently or frequently inundated. DEs may authorize the disposal of buildings and other improvements in any one or more of the following categories, which are located on lands which are not excess and which are not expected to become excess, and the sale is to be made after advertising:

(a) Buildings or improvements on land acquired by the Government determined to be available for disposal pursuant to ER 735–2–1 (Property Accounting Procedures-Civil).

(b) Buildings or improvements which cannot be kept in repair at a reasonable cost.

(c) Buildings or improvements which are dangerous to life or likely to damage adjoining structures or have become hazardous or nuisances.

(d) Buildings or improvements which are damaged or unsuitable for public service.

(e) Buildings or improvements constructed by the Federal Government which occupy or interfere with sites for new construction or for other civil works purposes.

(f) Temporary buildings or improvements which have served the purpose for which they were constructed.

§ 644.477 Civil works property—reimbursement of appropriation.

Under title 33, United States Code, section 558, the proceeds from a sale or transfer of buildings or improvements may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, on nonexcess land come within the purview of this law. For further instructions on disposition of proceeds, see § 644.322.

§ 644.478 Demolition of buildings and other improvements for utilization of salvage material.

With respect to DA property, demolition may be undertaken by the DE of buildings on non-excess land made available for disposal, when the salvage is to be used in construction or maintenance work by the Corps of Engineers or upon specific request from another service where funds for the purpose are made available. Real Estate funds will not be used for such demolition. Determination of practicability for use of buildings or improvements in authorized new construction at other sites or for salvage of materials will be made by the DE in accordance with existing instructions relating to use of materials in new construction. Where restoration of leased premises is being performed, it is the responsibility of the Corps of Engineers to perform the necessary demolition work as part of the restoration obligation, as set forth in §§ 644.444 through 644.471. Demolition may be accomplished under contract when special or expert services are required for removal of certain types of structures and funds are available therefor. Unused salvage materials will be turned over to redistribution and salvage officers for redistribution or disposal in accordance with existing regulations pertaining to personal property. The relocation of buildings or improvements on the same installation or for re-erection at another installation is not to be accomplished as a real estate function (AR 420–70). Further, it is provided in AR 420–70 that demolition of buildings or improvements where retention of the salvage for use at the installation is approved, or where no requirement or market is found for buildings or improvements approved for disposal by the Corps of Engineers, is a facilities engineering responsibility. Pursuant to AFR 87–4, disposal of AF buildings and improvements by sale will be accomplished by the Corps of Engineers, but all disposal of such property by salvage will be accomplished by the base commander.

§ 644.479 Authority for transfer of buildings and improvements to other Federal agencies.

Buildings and other imporvements which have been screened for defense requirements, as outlined in §§ 644.333 through 644.339, may be transfered to another Federal agency as hereinafter outlined. The authority for the transfer of such property to other Federal agencies is outlined in §§ 644.400 through 644.443. The responsible DE is authorized to transfer buildings or structures for removal from the site, which have been made available for disposal by proper authority, upon receipt of a request signed by an official of another Federal agency.

§ 644.480 Procedure for transfer.

Transfer of buildings to other Federal agencies will be accomplished by DD Form 1354. An estimate of value will be shown on DD Form 1354, Transfer and Acceptance of Military Real Property, or other forms used and, in the case of transfer without reimbursement, the following footnote will be made: ''Transfer to (Department or Agency), adjustment of funds not required.'' When the transfer is made at the direction of GSA, an explanation therefor will also be made on the form. Buildings and other improvements which are reported to GSA for screening against requirements of other Federal agencies (§§ 644.348 through 644.367) will be transferred to another Federal agency only at the direction of GSA and for the amount of reimbursement, if any, determined by GSA. Buildings and improvements which are not required to be reported to GSA will be screened against requirements of other Federal agencies by the responsible DE as provided in §§ 644.333 through 644.339. Upon request by a Federal agency for transfer of such property, the responsible DE will determine the amount of reimbursement, if any, in accordance with the criteria outlined in §§ 644.400 through 644.443.

§ 644.481 Responsibility of transferee.

Where buildings or other improvements are on lands leased to the United

States, the agency requesting the buildings will be expected to remove the building and restore the premises, as required by the terms of the lease, or to accept an assignment of the lease together with all obligations thereunder. Where the buildings or other improvements are to be removed from non-excess land, the transferee agency will be expected to perform reasonable site clearance as may be required by the commanding officer.

§ 644.482 Assignment to Department of HEW or successor agencies.

Pursuant to delegation of authority contained in FPMR 101–47.308–4, as set forth in §§ 644.400 through 644.443, the responsible DE may assign buildings or other improvements made available for disposal and not required for Federal purposes to HEW upon receipt of request therefore from the appropriate regional representative of that department for disposal for public health or educational purposes. Assignments will be effected by letter addressed as indicated in § 644.483. Further, pursuant to delegation of authority the Department may disapprove within 30 days after notice from HEW, any transfer of property proposed to be made by that agency for such purpose. The DE will be guided by the policy set forth in §§ 644.400 through 644.443 in regard to the delegation to disapprove transfers by HEW.

§ 644.483 Notification of Department of HEW or successor agencies.

When buildings or other structures are reported to GSA for screening pursuant to §§ 644.348 through 644.367, the Reports of Excess are available to HEW by the Regional Office of GSA, and no notice of the proposed disposal need be given by the DEs. Where buildings and other structures are not reported to GSA simultaneously with circularization of other Federal agencies, HEW will be notified in writing of the availability of such structures. Such notification will be addressed to the appropriate field representative of HEW, and will include the following information:

(a) A brief description of the buildings and improvements, including dimensions of buildings, types of construction, and demountable characteristics, if any.

(b) The extent of building site clearance expected.

(c) That the improvements must be removed and site clearance completed within a specified definite period from the date of assignment to HEW (usually 60 to 90 days, depending upon the size of the removal operation).

(d) When improvements may be inspected.

(e) That the improvements will be withheld from advertisement for bids for a period of 20 days from the date of the notification, unless the office submitting the notification is sooner informed in writing that such property is not needed for school, classroom, or other educational use or for use in the protection of public health, including research. If within the 20-day period, notice is received of a potential need, the property may be held an additional 45 days until a certification of need or request for assignment is received.

§ 644.484 Procedure for disposal through the Department of HEW or successor agencies.

During the period held, action preparatory to the publication of Invitations for Bids and Specifications of Sale of Buildings and Improvements will be taken in order to minimize the time lapse between the expiration of the 20-day period and the beginning of the sale procedure. Inquiries received prior to the expiration of the holding period from state or local agencies or qualified organizations seeking the purchase of available improvements for health or educational purposes, will be referred to the appropriate field representatives of HEW.

(a) Final disposal is not effected until the improvements have been transferred by HEW to an eligible recipient. Therefore, in the letter of assignment, HEW will be requested to furnish to the responsible DE, three copies of the sales contract. One copy of the contract will be forwarded to the officer accountable for the property, together with a certificate of performance upon completion of the operation (the latter to be furnished by the HEW contracting officer), and one copy will be furnished to the property auditor charged

with periodic audit of the property records.

(b) Should HEW fail to consummate disposition of the improvements after assignment to it and request cancellation of the assignment, the assignment may be cancelled by a letter of cancellation and appropriate disposition of the improvements affected. If there is an excessive number of such requests, DAEN–REM will be informed in order that corrective action may be requested of HEW.

§ 644.485 Sale of buildings and other improvements.

Buildings and other improvements made available for disposal by competent authority and not needed for further Federal utilization, or assigned to HEW, will be diposed of by sale by the responsible DE. Sales will be accomplished in the following manner:

(a) *Sale to Lessor Where Restoration is not Required.* Where the terms of a lease do not require restoration by the Government, it may nevertheless be in the best interest of the Government to negotiate a sale of the improvements to the lessor. In such cases, the DE is authorized to negotiate such sale where the net salvage value of all improvements located on the premises involved in any one lease is less than $1,000, and the sales price is determined to be as high as can be expected under the circumstances and compares favorably with the Government estimate prepared in accordance with paragraph (d) of this section.

(b) *Sale Under Options.* All leases or other rights of occupancy will be examined to determine whether the owner of the land has an option to purchase buildings or other improvements. See § 644.486 for sale of improvements constructed under Emergency Plant Facilities or similar contracts.

(c) *Sale to Eligible Public Agencies, the Boy Scouts, and the Public.* The sales procedure, including notice to eligible public agencies and advertising, set forth in §§ 644.540 through 644.557 will be followed in the sale of buildings or other improvements.

(d) *Appraisal.* Except as otherwise provided in §§ 644.540 through 644.557 buildings and other improvements will be appraised prior to sale. Except as provided in § 644.490, appraisal will be based on the highest and best use which may be for (1) removal and use intact; or (2) for dismantling, and removal and stockpiling the salvageable material for reuse or sale.

§ 644.486 Disposal of buildings and improvements constructed under emergency plant facilities (EPF) or similar contracts.

Procedure for the disposal of property constructed under a facilities contract on lands neither owned by nor leased to the Department is set forth as follows:

(a) *By Using Service.* Disposal of structural components as well as equipment may be accomplished by the using service. The term ''structure'' is defined to mean plant equipment which:

(1) Is held under a facilities contract of the Department;

(2) Is not readily severable;

(3) Is a separate building or a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a defense contractor carries on part or all of his defense production.

(b) *By the Corps of Engineers.* Where disposal of structures, as well as other plant equipment located within such structure, is to be accomplished by the Corps of Engineers, instructions will be issued as to the extent to which the Corps of Engineers will participate in such action. Subject to special instructions by DAEN–REM, the following coordinated actions will be taken:

(1) The using service will report to the Corps of Engineers the property which is excess to the Department's needs.

(2) The excess directive report will include the designation by name and address of a responsible officer of the using service to join with the DE concerned as a representative of the Chief of Engineers. These two representatives will meet with the contractor within seven days of their appointment to determine his interest in acquiring all or any part of the facilities. This determination will be made in the shortest possible time.

(3) The meeting with the contractor will promptly establish those facilities

to be retained by the contractor and those to be declared excess. Waiver of existing options will be obtained where necessary.

(4) Equipment that is of no interest to the contractor will be disposed of by using service in accordance with applicable regulations.

(5) Custody of and accountability for the entire facility remains with the using service until other arrangements have been completed.

(6) The Corps of Engineers will complete negotiations for property to be retained by the contractor as rapidly as possible.

(7) When an agreement has been reached with the contractor, the DE or his contracting officer may execute the supplemental agreement to the lease or facilities contract transferring improvements, including machinery and equipment as a unit. Authority for the transfer should be recited in the supplemental agreement. In the case of a supplemental agreement to a facilities contract, authority will be obtained from the using service through its local representative for the DE or his contracting officer to sign the supplemental agreement transferring the improvements, including machinery and equipment to the contractor. (Figure 11–18 in ER 405–1–12 is the suggested format for Supplemental Agreement to Emergency Plant Facilities Contract.)

(8) Upon completion of negotiations, the responsible DE will issue instructions to the using service to dispose of equipment not included in the final negotiations in accordance with applicable regulations. Accountability for the property will be transferred at this time to the new owner or, in the case of real property retained by the Department, to the Corps of Engineers.

(9) Property not disposed of to the contractor will be disposed of in the same manner as improvements located on surplus leasehold property.

§ 644.487 Procedure for disposal of surplus chapels.

By direction of the President and pursuant to GSA and Army regulations, special procedures have been established for disposal of chapels. Surplus chapels must be segregated from other buildings for sale intact, separate and apart from the land, for use as shrines, memorials, or for religious purposes. Where the chapel is located on surplus land and it is determined the chapel may properly be used in place, a suitable area of land may be set aside for such purposes and sold with the chapel (§ 644.430).

§ 644.488 Soliciting applications for purchase of chapels.

Promptly upon receipt of an approved DA Form 337 (Request for Approval of Disposal of Building and Improvements) or AF Form 300, the DE will solicit applications by public advertising. Advertising will consist of publication of notice in newspapers, paid advertising when necessary, posting of notices in public places, and mailing of invitations to all known local churches. A period of thirty (30) days will be allowed in which to file written applications. Instructions will provide that the applicant will give his name, address, and denomination if applicable. The advertisement will describe the chapel, give its location, terms and conditions of sale, and the time and place where application must be filed. The advertisement will also state that the sale price will be made available upon request of interested parties, and that the Chief of Chaplains will select the purchaser. To assist that office in making a recommendation, the following information should be included in applications for the purchase of chapels:

(a) Purpose and intent of the use of the chapel.

(b) Facilities currently being used by the church/organization applying.

(c) Membership size of the church/organization.

(d) History of the church/organization and when established locally.

(e) Denomination and/or organization.

§ 644.489 Conditions of sale of chapels.

When sold under the provisions of § 644.490, chapels shall be sold subject to the condition that during their useful life they will be maintained and used as shrines or memorials, or for religious purposes, and not for any commercial, industrial, or other similar use. The contract or deed of sale will

provide further that in the event the purchaser fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference, if any, between the appraised fair market value of the chapel, as of the date of the sale, without restriction on its use, and the price actually paid. This difference should be figured at the time of sale and included in the contract of sale or deed of conveyance.

§ 644.490 Determining price and provisions of sale for chapels.

(a) *Price.* The sale price of the chapel structure in the case of sale for use as a shrine, or memorial, or denominational house of worship, will be at its fair value in the light of the conditions imposed relating to its future use, and the estimated cost of removal from the site. Appraisals made to establish the price of specific chapels will be predicated on:

(1) The fair value of the material in place, less the cost of dismantling, removal of the material to the outside limits of the installation, and the cost of restoring the site.

(2) The restrictions imposed on the future use of the chapel with due regard to the difference between the fair value price obtainable in the open market and that which might be obtainable in the limited market to which sale is restricted.

(3) In addition to the criteria set forth in paragraphs (a)(1) and (2) of this section cognizance will be taken of the prevailing prices of chapels being sold by other disposal agencies within the general area in which chapels are being disposed of by the Corps of Engineers.

(b) *Provisions of Sale.* (1) Disposal of chapels which are not excess or surplus will be conditioned on the removal of the chapels from the premises. In the disposal of chapels located on excess or surplus leased land, no commitments will be made to purchasers for the continued use of utilities and services (sewer, water, electric, fire protection, guarding). Arrangements may be made between the lessor of the premises and the purchaser to leave the chapels in place, provided the lessor releases the Government from any and all obligations to restore the premises occupied by the chapel.

(2) Care will be exercised that, prior to the disposal of the chapel, equipment such as organs, hymn books, and other ecclesiastical furnishings have been removed or shipped in accordance with applicable regulations.

(3) All copies of the contract evidencing the sale of chapels will be accompanied by copies of the instructions, if any, received from the Chief of Chaplains authorizing the disposal. If no such instructions have been received, the DE will attach a statement that in the absence of instructions, all known interested parties have been contacted and that the disposal has been made after due consideration of applications, the uses to be made of the chapel building and the need therefor.

§ 644.491 Coordination with the Chief of Chaplains.

The DE will submit applications for the purchase of chapels to DAEN–REM, who will request the Chief of Chaplains to select the purchaser and advise DAEN–REM of his selection. Where no applications are obtained as a result of the advertising, the DE will so advise the Chief of Chaplains, reporting steps taken to obtain a purchaser, and recommending that the chapel be sold without conditions, in the same manner as provided for disposal of other buildings. If the Chief of Chaplains does not approve this recommendation or issue other appropriate disposal instructions within a period of 60 days, DAEN–REM will be informed.

§ 644.492 Report on disposal of chapel.

As soon as practicable after the sale has been consummated, notification of disposal of chapels will be made by the DE direct to the Chief of Chaplains, with a copy to HQDA (DAEN–REM) WASH DC 20314, by letter, which will contain the following information:

(a) Location and brief description of chapel or chapels.

(b) Reference to disposal instructions, if any, received from the Chief of Chaplains.

(c) Identity of purchaser and price paid.

§ 644.493 Release of restrictions on chapels sold.

Where the purchaser fails to maintain and use the chapel in accordance with the conditions of sale, or the purchaser requests release of the conditions, the facts will be reported to DAEN–REM with appropriate recommendations. DAEN–REM may release the purchaser from the conditions of sale without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was sold, or that such release will not prevent accomplishment of the purpose for which the property was sold.

§ 644.494 Donation, abandonment or destruction.

(a) *General.* Improvements may be abandoned, destroyed or donated to a public body, upon a finding in writing by the DE (but in no event shall such finding be made by the official directly accountable for the property) that the property has no commercial value or that the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, or that abandonment or destruction is required by military necessity, or by considerations of health, safety or security.

(b) *Finding of Fact.* The finding will be prepared as a separate document headed: Finding of Fact for ———— The finding will be sufficiently complete within itself to justify the decision to donate, abandon, or destroy the property proposed, without outside reference. It will be drafted to provide, where the finding is made by the District Engineer, for approval by the Division Engineer. Finding of fact concerning property which had an original cost in excess of $500,000 requires the approval of DAEN–REM. A copy of each such finding, so approved, will be forwarded by the DE to the regional office of GSA.

§ 644.495 Donation to a public body.

A public body, as defined by GSA for this purpose, means any State, territory or possession of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, or any agency of the Federal Government. Property as to which findings of fact have been made, may be donated to a public body.

§ 644.496 Abandonment.

Abandonment, as used herein, has reference to cases where the lessor or a permittor Government agency is unwilling to accept transfer of buildings or improvements in lieu of restoration, but is willing to permit the Department to leave buildings or improvements having no net salvage value on their premises. It is desirable to transfer title of or accountability for improvements having no net salvage value to lessors or permittors instead of obtaining their consent to abandon such improvements. Abandonment as authorized herein will not be a means for dropping accountability or responsibility for maintenance of improvements on non-excess land.

§ 644.497 Destruction.

Disposal by the Corps of Engineers, as authorized in AR 405–90, does not contemplate expenditure of funds for destruction of improvements which have no sale or salvage value. Accordingly, where such improvement have been approved for disposal by the Corps of Engineers, they will be referred back to the appropriate Army of Air Force command for disposal action under AR 405–90 or AFR 87–4 as appropriate. However, improvements with little or no salvage value may be included in the same item with other improvements being offered for sale which are more attractive improvements without an expenditure of Government funds.

§§ 644.498—644.500 [Reserved]

Disposal of Standing Timber, Crops, and Embedded Gravel, Sand and Stone

§ 644.501 Authority.

(a) *Crops.* Crops are defined as personal property in FPMR 101–47.103–12 and are disposed of under FPMR 101–45.309–1 (Sale, Abandonment, or Destruction of Personal Property). The Corps of Engineers does not dispose of crops on military lands. However, when lands are in the custody of the Corps

for construction purposes, the Corps will dispose of crops thereon.

(b) *Standing Timber, Embedded Gravel, Sand or Stone.* These are defined as real property (FPMR 101–47.103–12(c)). The holding agency is designated as disposal agency for standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land. (FPMR § 101–47.302–2).

(c) *Small Lots of Standing Timber.* In accordance with AR 405–90, installation commanders are authorized to sell small lots of standing timber with a value not more than $1,000 that are in conformity with the installation Forest Management Plan. Public notice is required of the availability of the timber for sale. The total of such sales in any one calendar year will not exceed $10,000.

(d) *Restriction on Removal of Sand, Clay, Gravel, Stone and Similar Material.* The Army is without authority to remove such products from public domain land located within the military installation where the material is to be used off the installation. With permission of the Secretary of the Interior, such material may be removed pursuant to 30 U.S.C. 601. In such cases, DAEN–REM will obtain the necessary permission.

§ 644.502 Determination of excess status.

(a) *Military.* The procedure for excessing and disposal of standing timber and embedded gravel, sand and stone is outlined in AR 405–90. The procedure for the determination of availability of timber for disposal is outlined in AR 420–74.

(b) *Civil Works.* (1) When the DE believes that standing timber, embedded gravel, sand or stone (whether designated for disposition with the land or by severance and removal from the land) is excess to requirements, he will submit a recommendation to DAEN–REM for approval. The DE is authorized, however, to dispose of standing timber or other forest products required to be removed incident to construction and operational requirements of the project; that which is generated incident to recreational development or the management of public park and recreational areas or wildlife management areas; or that which is generated in accordance with approved forest management supplements to the approved Master Plan (ER 1130–2–400). As far as practicable, high grade species in short supply will not be disposed of, but will be retained for possible defense requirements. When the amount for sawtimber under the above criteria available for disposal exceeds 5,000,000 board feet, request will be made to DAEN–REM, for determination of whether there are any defense requirements for the timber. The request will include an estimate of the amounts by species and the range in sizes. All timber disposals, except those involving timber below the project clearing line or in construction sites, will be compatible with the planned use of the areas for the purpose to which they are allocated in approved Master Plans and such disposals will be incidental to that use. The DE may authorize the disposal of growing crops when their disposal is deemed necessary to prevent waste.

(2) Under the provisions of section 5 of the act of 13 June 1902, as amended, (33 U.S.C. 558), proceeds from disposal of these items on civil works property may be returned to the appropriation.

§ 644.503 Methods of disposal.

Standing timber, crops, sand, gravel, or stone-quarried products, authorized for disposal in accordance with the foregoing, will be disposed of by transfer to another Federal agency or by sale.

§ 644.504 Disposal plan for timber.

The DE take appropriate action to assure that construction contractors are not authorized, in the clearance of construction sites, to burn or otherwise destroy merchantable timber unless circumstances exist which preclude sale or salvage. In preparing for disposal of timber, a disposal plan will be prepared which will include the following:

(a) Live timber and merchantable dead timber will be marked for cutting in accordance with the land management plan, Master Plan, or forestry supplement thereto, and cutting will be limited to the timber so marked. The

disposal plan will contain sufficient information in this respect to permit preparation of specifications for inclusion in the invitation for bids.

(b) Utilization of existing roadways and construction of new roads and saw mills should be limited to the minimum necessary.

(c) Requirement that the customary practices in elimination of fire hazards be observed with necessary specifications therefor.

(d) The installation commander will be consulted to obtain his desires in connection with security measures, and other matters affecting the installations, and the requirements of such measures will be set forth specifically.

(e) Any measures considered necessary to protect timber and young growth not marked for cutting will be specified.

(f) Where an appraisal is required, the appraisal report will be prepared by a competent forester. The report will indicate the number and size of each species and classification of trees to be cut; the estimated board feet in log scale measurement; linear estimates of pole timber, and amount of cord wood. The appraiser should indicate in the appraisal report what, in his opinion, should be acceptable as a minimum price for different types of timber, as well as a total or lump sum estimate for the whole. Methods of administration and sale of timber by the Army or Air Force should follow the same general rules employed by the U.S. Forest Service in its sales and forestry practices. U.S. Forest Service personnel may be available for this work, if desired, on a reimbursable basis, provided the size of the area in question and the location render such arrangements feasible.

(g) Minor sales, involving lots with an estimated value of $1,000 or less, may be accomplished by the reservoir manager on civil works projects under general guidance issued by the DE Real Estate Branch. In such minor sales, two or more informal bids, in writing, will be obtained, if possible. If only one bid can be obtained, the proposed sale will be posted for a period of ten (10) days.

§ 644.505 Disposal plan for embedded gravel, sand or stone.

Prior to offering sand, gravel, or stone for disposal, a disposal plan will be prepared, which will include the following:

(a) Control of transportation facilities which will limit use of roads and construction of new roads to the minimum necessary.

(b) Security measures established by consultation with the installation commander to properly protect Government property and other interests of the Government.

(c) Where applicable, the depth or level to which the material may be removed, and any restoration of the site after removal.

(d) Specifications as to methods to establish amount of material removed for the purpose of payment.

(e) With certain exceptions as discussed in paragraph (d) of § 644.544 an appraisal report will be prepared by a person familiar with the material involved and the operations for mining, quarrying or otherwise removing it, giving the type or grade of material involved and an opinion as to the minimum price that should be acceptable.

§ 644.506 Procedure for transfer to another Federal agency.

As soon as possible after standing timber, embedded sand, gravel, or stone are made available for disposal, other Federal agencies having activities within the vicinity of the location of the property and which, in the opinion to the responsible DE, may desire transfer of the property will, to the extent practicable or economical, be notified of the availability of the property for disposal. Such notification should include the following: information concerning how arrangements can be made to inspect the property; information concerning conditions governing cutting, harvesting, mining, or removal of the property and a statement that the property will be advertised for sale upon the expiration of fifteen (15) calendar days from the date of the notification, unless a request for transfer of the property, or a statement that a request for transfer of the property, or a statement that a request therefor

may be made, is received within the fifteen (15) day period. Should a Federal agency request within the fifteen (15) day period, that disposal of the property be withheld pending determination of a requirement, disposal will be withheld not longer than sixty (60) days from the date of notice of availability, unless DAEN–REM approves withholding disposal for a longer period. Disposal will not be withheld for such sixty (60) day period, extended if applicable, if to do so would interfere with construction or other necessary operations. Should a request be received from a Federal agency for transfer of the property, the property will be transferred in accordance with existing procedures without reimbursement except as provided by FPMR 101–47.203–7. If no request for transfer is received, the property will be considered surplus and disposed of by one of the methods outlined in §§ 644.507 and 644.508. The foregoing instructions do not apply to land clearance operations performed either by contract or force account. It applies only to those cases where it is proposed to offer property for sale.

§ 644.507 Sales.

DEs will be governed by the general procedure set forth in §§ 644.540 through 644.557 in selling standing timber, growing crops, embedded sand or gravel or stone products.

§ 644.508 Agreement with Small Business Administration (SBA) on sale of timber.

The Department of Defense has entered into an agreement with the SBA for the development of a program of assistance for small concerns operating in the timber business. This agreement is published for compliance as Figure 11–19 in ER 405–1–12. In the implementation of this agreement, the DE will cooperate with field representatives of SBA to the fullest extent compatible with efficient administration of the Army's timber disposal program.

§ 644.509 Status as small business.

(a) *Definition.* Each invitation for bids for the sale of timber with an estimated value of $2,000 or more will contain a definition of small business and provision for self-certification of the bidder's status within its terms. A definition for use in invitations for bids on Army timber is provided in the ''Certificate as to Small Business Status'' (Figure 11–20 in ER 405–1–12).

(b) *Self-Certification.* 13 CFR 121.3–9(c) provides:

> In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved.

(c) *Definition for Set-Asides.* The definition of small business provided in Figure 11–20 in ER 405–1–12 omits portions of the definition prescribed by SBA regulations which are not presently applicable to sales of Army timber. The omitted portions relate to sales of timber reserved for or involving preferential treatment of small business § 644.512. These portions of the definition are subject to frequent revision by SBA.

§ 644.510 Information for SBA on timber sales.

Representatives of SBA will visit District offices from time to time for purposes of coordination and assistance; to furnish names and information on prospective bidders from the SBA facilities list; and to obtain information on programmed sales of Army timber. In addition to the information which may be furnished during the course of these visits, the following items of information will be furnished to appropriate SBA field offices on each sale of timber products with an estimated value of $2,000 or more:

(a) Advice on proposed or prospective timber sales of Army timber.

(b) Copies of invitation for bids.

(c) Name of successful bidder, his status as a small business, the bid price, and an estimate of the amount of timber sold.

§ 644.511 Certificate of competency by SBA.

Section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) authorizes the SBA to certify the competency of a small business concern as to capacity and credit. In any case where timber is being sold on a credit basis, if the bid

is being questioned solely on the financial ability of the bidder and the bidder is a small business concern, the DE will notify the appropriate SBA field office immediately and follow the other procedures provided by Section III of the DOD–SBA Agreement. A certificate of competency issued by SBA will be honored in such cases.

§ 644.512 DA–SBA joint set-aside determination.

Section 15 of the Small Business Act (15 U.S.C. 644), provides that where certain joint determinations are made by the SBA and a disposal agency, the award of a contract for the sale of Government property shall be made to a small business concern. Section IV, Joint Set-Aside Determination of the DOD–SBA Agreement implements Section 15 of the Small Business Act. It is not anticipated that SBA will recommend that Army timber be reserved or set aside for sale to small business concerns on an exclusive or preferential basis. In the event recommendations on set asides of Army timber are received from SBA field offices, the SBA recommendations will be forwarded promptly to HQDA (DAEN–REM) WASH DC 20314 with DE comments and recommendation.

§§ 644.513—644.515 [Reserved]

Clearance of Explosive Hazards and Other Contamination From Proposed Excess Land and Improvements

§ 644.516 Clearance of Air Force lands.

The Chief of Engineers has no responsibility for inspecting or clearing excess Air Force land of explosives or chemical/biological contaminants. When a target or bombing range, or other land under the control of the Department of the Air Force, which might be contaminated with explosives or other harmful or dangerous substances, becomes excess to Defense requirements, the appropriate DE will obtain a certificate as to the extent of contamination and clearance thereof from the Commander, Air Force Logistics Command (AFLC), Wright-Patterson Air Force Base, Ohio 45433. The Corps of Engineers will continue to be the agency with which the disposal agencies, purchasers, and former lessors will communicate when explosives or objects resembling explosives, are discovered on the land after dispostion has been effected. The AFLC, upon request of the DE, will neutralize or remove such objects or substances and make a report to the requesting agency or person. See §644.535 for support required of the Corps.

§ 644.517 Clearance of Army lands.

The responsibility for performing clearance of ordnance contaminated excess Army military real property is placed upon and remains with the using command. That command, after completion of the clearance work, will furnish the DE a ''Statement of Clearance'' (Appendix E, AR 405–90) and a record of the clearance work performed. In addition to the Statement of Clearance, the following information will be furnished to the DE upon completion of the neutralization:

(a) Records of the neutralization work performed, including statement of methods employed.

(b) List of dangerous and explosive materials removed.

(c) Number and names of demolition technicians employed.

(d) Other data that may be pertinent in the defense of any suit or claim that might subsequently arise as a result of civilian occupancy.

§ 644.518 Determination of categories.

Prior to making a recommendation for excess, the state of contamination of the property must be determined by the installation commander as either of the following:

(a) *Category One.* Those lands such as ammunition plants, storage, test, impact and training areas, bombing or target ranges, which may contain explosives or unexploded ordnance. The report will include proposed methods of neutralization and the costs thereof.

(b) *Category Two.* Those lands or buildings which are suspected of being contaminated with radiological, industrial-military chemicals, or explosives. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), Aberdeen Proving Ground, Maryland 21010, will be requested to determine if the

land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for disposal.

§ 644.519 Responsibilities.

(a) *Category One.* The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety veiwpoint, clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomplished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN–REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of ''Prior Approval'' for those disposals requiring reports to the Armed Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this subpart F. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN–REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

(b) *Category Two.* The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all and/or buildings where an excessing action is planned. USATHAMA will conduct the survey and assessments of all proposed excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the Major Army Command (MACOM) to DAEN–REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700–4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminated facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700–4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

§ 644.520 Contaminated industrial property.

(a) GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of the Office,